

United States District Court

Southern District of California

1	UNITED STATES OF AMERICA,)	Case No. 10-CR-4246 JM
2)	
3	Plaintiff,)	San Diego, California
4)	
5	v.)	Tuesday, February 22, 2011
6)	2:35 p.m.
7	BASAALY SAEED MOALIN,)	Status/Discovery Hearing
8	MOHAMED MOHAMED MOHAMUD,)	
9	ISSA DOREH,)	
10	AHMED NASIR TAALIL MOHAMUD,)	
11)	
12	Defendants)	
13)	

Before the Honorable William V. Gallo
United States Magistrate Judge

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U.S. Courthouse Annex
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San Diego, CA 92101
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Proceedings recorded by electronic sound recording;
Transcript produced by Official Court Reporter

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1 San Diego, California - Tuesday, February 22, 2011, 2:35 p.m.

2 (Defendants Mr. Moalin, Mr. Doreh, and Mr. A. Mohamud
3 are not present.)

4 THE CLERK: Calling matter 2 on calendar,
5 10-CR-4246, the United States of America versus Mohamed
6 Mohamed Mohamud.

7 MR. SHERIF: Good afternoon, your Honor. Mahir
8 Sherif on behalf of Mr. Mohamed Mohamed Mohamud, who is
9 present before you, Judge. And I guess for the purposes of
10 this hearing, we're probably going to have to waive the
11 presence of the Somali interpreter. I think my client will
12 be fine for now.

13 THE COURT: Well, I seem to recall that the Somali
14 interpreter we had last time was -- was not very good.

15 MR. SHERIF: No, no, no. And I think the
16 interpreter's office agreed with you because we haven't seen
17 that interpreter since.

18 THE COURT: No, I don't think you will.

19 MR. SHERIF: No.

20 THE COURT: But, Mr. Sherif, your client, Mr.
21 Mohamud, as I recall, his understanding of English was pretty
22 good --

23 MR. SHERIF: That's correct.

24 THE COURT: -- and -- but if you or he, Mr.
25 Mohamud, don't feel comfortable conducting this hearing

1 without the presence of a qualified and certified -- I don't
2 even know if there's a certified Somali interpreter within
3 the federal system -- but if you don't feel comfortable
4 proceeding, we won't proceed until we -- we get one.

5 MR. SHERIF: No, your Honor, we're comfortable in
6 proceeding.

7 DEFENDANT MR. MOHAMUD: I am comfortable.

8 THE COURT: You're comfortable, Mr. Mohamud?

9 DEFENDANT MR. MOHAMUD: Yes, yes.

10 THE COURT: You're understanding everything I'm --

11 DEFENDANT MR. MOHAMUD: Yes, yes.

12 THE COURT: -- I've said so far?

13 DEFENDANT MR. MOHAMUD: I understand you.

14 THE COURT: All right. Okay. We're here on a
15 status regarding counsel.

16 MR. SHERIF: That's correct, your Honor. May I
17 approach, your Honor?

18 THE COURT: Yes. I'm sorry. Did you all get an
19 opportunity to --

20 MR. COLE: Not --

21 THE COURT: -- make your appearances?

22 MR. COLE: Your Honor, William Cole and Caroline
23 Han for the United States. Thank you.

24 THE COURT: Okay.

25 MR. SHERIF: Your Honor, I guess there was a

1 misunderstanding that I was -- and I think Judge Miller's
2 chambers may have called you on that issue, on the issue of
3 being retained; I am not retained.

4 THE COURT: Right. I seem to recall when this
5 first came about a couple months ago, back in November -- I
6 think it was the beginning of November -- that you had
7 requested appointment. There was some discussion that you
8 may be retained. I seem to recall -- and I could be wrong on
9 this -- my recollection is that you were provisionally
10 appointed or conditionally appointed, whatever we want to
11 call it, and we never -- never resolved that.

12 MR. SHERIF: That's correct.

13 THE COURT: Is that my recollection? I see Ms.
14 Geckos back -- were you in court at the time, Ms. Geckos?

15 MS. GECKOS: Yes, your Honor. I was on duty at the
16 time the case came in, and that's my recollection as well.

17 THE COURT: Okay. Because I haven't reviewed the
18 transcript for that day, so I could be wrong, but is that
19 your recollection?

20 MR. SHERIF: That is, your Honor, and the Court --
21 yes.

22 THE COURT: And, Ms. Han or Mr. Cole, were either
23 of you in court when we discussed that and --

24 MR. COLE: Yes, your Honor, and, in fact, I -- my
25 only recollection is that I thought you actually had decided

1 to simply appoint him. Perhaps it was provisional, but I
2 remember at the time I took the position --

3 THE COURT: Yours was contrary.

4 MR. COLE: I took the position that if you were
5 going to appoint someone, you should go to the wheel or the
6 list, not to --

7 THE COURT: Oh, that's right. That's right.

8 MR. COLE: -- and you said no, and you appointed
9 him I thought.

10 THE COURT: That --

11 MR. COLE: And I thought it was just an
12 appointment, but perhaps it was still provisional in case --
13 maybe there had been an affidavit. I don't remember --

14 THE COURT: Yeah, that's right. I recall that that
15 was your -- yeah. Okay. All right. I'm looking at the
16 financial affidavit that's been provided to me now by Mr.
17 Sherif on behalf of his client, and in reviewing the
18 financial affidavit, it appears, Mr. Mohamud, that you do not
19 have the financial ability to afford an attorney on your own;
20 is that correct?

21 DEFENDANT MR. MOHAMUD: Yes, suppose.

22 THE COURT: And you are requesting --

23 DEFENDANT MR. MOHAMUD: Yes.

24 THE COURT: -- counsel to be appointed for you.

25 DEFENDANT MR. MOHAMUD: Yes.

1 THE COURT: All right. Mr. Sherif, for whatever
2 it's worth then, you're hereby appointed.

3 MR. SHERIF: Thank you, Judge.

4 THE COURT: And if you were provisionally
5 appointed, I'm removing that characterization at this time,
6 and you are appointed.

7 MR. SHERIF: Could the record also show that I was
8 appointed from the date that you provisionally appointed me?

9 THE COURT: Sure.

10 MR. SHERIF: Thank you, Judge.

11 THE COURT: Because I seem to recall it was that I
12 did. It was either a full-out appointment or a provisional
13 appointment. Either way, you were appointed.

14 MR. SHERIF: All right.

15 THE COURT: All right.

16 MR. SHERIF: On another issue, your Honor --

17 THE COURT: I think we resolved that.

18 MR. SHERIF: We did.

19 THE COURT: You got another issue for me?

20 MR. SHERIF: Yes, Judge, and that's on the -- I'm
21 ready to submit a bail package. Now, does the Court want me
22 to address it to you or do -- should I address it to Judge
23 Miller first? However the Court chooses.

24 THE COURT: I -- I would think that you ought to
25 ask Judge Miller first and he may refer down here to me. Now

1 that the case is, you know, in front of Judge Miller, I think
2 he should have the opportunity to weigh in on that or have
3 the first right of refusal I would say.

4 MR. SHERIF: Fair enough. I'll do that this
5 afternoon.

6 THE COURT: All right.

7 MR. SHERIF: Thank you, your Honor.

8 THE COURT: All right. Do we have all the
9 attorneys here now?

10 THE CLERK: We do.

11 THE COURT: We do?

12 MR. GELLER: Except for Mr. Troiano, but I've been
13 in touch with his investigator, and I can either represent
14 his interests or I can relate to the Court what we've
15 learned, so we -- we can proceed in that regard.

16 MR. COLE: He was actually put on the calendar for
17 Thursday. He called me today and said that this matter is on
18 your calendar -- Mr. Troiano's matter's on your calendar for
19 Thursday at two o'clock.

20 THE COURT: What do I have on Thursday?

21 (Off-the-record discussion between the Court and the
22 clerk.)

23 MR. GELLER: That's fine. But I can -- I'd like to
24 address --

25 THE COURT: He can't be here this afternoon?

1 (Off-the-record discussion between the Court and the
2 clerk.)

3 THE COURT: So how do we resolve -- I understand
4 there's a discovery issue that Judge Miller has referred down
5 to me, and I have a superficial understanding of that
6 discovery issue --

7 MR. GELLER: Maybe we should start off by putting
8 it on the record --

9 THE COURT: -- and I just want to make sure that we
10 need to -- is it wise to do this with three of the four
11 attorneys here but not everyone because we're going to have
12 to cover the same ground, I would think, when Mr. Troiano's
13 present, or should we just do all this at the same time?

14 MR. COLE: Your Honor, I -- I guess I'd largely
15 defer to you and defense counsel because I'm not even sure
16 exactly -- I don't even think it's a discovery issue; I think
17 it's more of a prisoner -- or a inmates' detention facility
18 issues, and I'm not sure exactly what the extent of it is.
19 And I -- I defer to Mr. Geller and Mr. Sherif.

20 MR. GELLER: Well, maybe -- maybe --

21 THE COURT: Well, why don't we do this. Why don't
22 you make -- state your appearances for the record. Mr.
23 Mohamud, you can have a seat.

24 MR. GELLER: Marc Geller, your Honor, on behalf of
25 Mr. Moalin. I assume that he's not going to be present this

1 afternoon.

2 THE COURT: That's right.

3 MS. HANOVER: And Holly Hanover on behalf of Ahmed
4 Nasir Mohamud. He's also not present, your Honor.

5 THE COURT: All right. Now --

6 MR. GELLER: The issue --

7 THE COURT: -- do you want your clients present? I
8 mean we're -- we're talking about procedural issues, not
9 necessarily legal or factual issues, but if you want your
10 clients present, then we will schedule this for another time.

11 MR. GELLER: Well, maybe it would be good to have
12 everyone here. One of -- one of the things we want to
13 address -- maybe we can explain to the Court -- it's not
14 simply having the -- trying to get the Court involved in
15 having my client removed from segregation -- and I'd just as
16 soon put this on the record, and then Mr. Cole might look
17 into this and maybe we'd take it off calendar if he can help
18 us out.

19 There's a proposed protective order that Mr. Cole
20 has -- and I think he's made good efforts to try and deal
21 with this -- but he told me that he was going to provide both
22 the MCC and Geo with a full set of CDs that have all of the
23 1100 hours, more or less, of intercepted telephone calls,
24 most of which pertain to my client, provided to all
25 defendants through the appropriate law libraries at Geo and

1 at MCC.

2 The problem that we've encountered -- and we
3 verified this through Mr. Troiano's investigator; he's
4 present in court, and he went today to speak with the law
5 librarian at Geo because we -- I learned this from the
6 warden, and he wanted to simply verify it to make sure that
7 this was in fact the case. And what --

8 THE COURT: Can I interrupt? Are all the
9 defendants in Geo?

10 MR. GELLER: No.

11 MS. HANOVER: No.

12 MR. SHERIF: No, your Honor.

13 THE COURT: They're all --

14 MS. HANOVER: Two are in MCC and two are in Geo
15 from my understanding.

16 THE COURT: Okay.

17 MR. GELLER: And so Mr. Troiano's client and my
18 client are both in Geo. Ironically, they're in segregation
19 together in the same room. So I -- to me that seems
20 preposterous. That said --

21 THE COURT: That they're in segregation or
22 segregation in the same room?

23 MR. GELLER: They're in segregation in the same
24 room. I don't know what the purpose of segregation --

25 THE COURT: You don't find it preposterous that

1 they're maybe in segregation --

2 MR. GELLER: Well --

3 THE COURT: -- but that they're together?

4 MR. GELLER: -- according to all of the sources
5 I've spoken with, including the government -- but I don't
6 want to put words in Mr. Cole's mouth -- and the lawyer at
7 MCC, they don't feel they need to be in segregation either.
8 They put them in segregation because -- and the marshal
9 doesn't either -- because the Geo does think they should be
10 in segregation.

11 That said, that creates a real problem. They would
12 be able to go to the law library for approximately 45 minutes
13 of actual time. Since they're in shackles, they have to be
14 walked to the law library in shackles, and then they take off
15 the shackles. And because they have requested prayer time,
16 they have to go to the law library between 4:00 and 5:00 in
17 the morning, at which time they'll have somewhere between a
18 half hour and 40 minutes four times a week at most to listen
19 to these intercepted calls.

20 Additionally, the government has provided us by way
21 of discovery somewhere around 500 pages of text that the
22 government has interpreted into English as verbatim --
23 alleged verbatim translations. Of course, we haven't gotten
24 to the point where we've been able to verify or confirm that
25 we think they are the actual verbatim translations, but we

1 have been able to do enough investigation in discovery to
2 learn that -- and I think Mr. Cole will agree -- that they
3 aren't complete conversations. For example, the verbatims
4 take up -- the verbatims aren't the total conversation; parts
5 are redacted, parts aren't that important, parts they haven't
6 interpreted.

7 In order for us to prepare to properly represent
8 our clients, we need them to be able to hear the intercepted
9 telephone calls, and we need them to be able to view the
10 government's version of what they allegedly said, and we need
11 to be able to talk to them about whether or not in fact they
12 did say what the government alleges they said.

13 If they remain in segregation and they can have
14 maybe three and a half hours a week to do this, we would ask
15 the Court to set the trial in 2015. Maybe we'd continue it
16 further. There's a few different ways we could deal with
17 this. One way would be to change the protective order so we
18 can give each of our clients in confinement, in
19 segregation -- which would be fine; they could remain in
20 segregation -- they get a full copy of the verbatims -- I've
21 already photocopied it at my expense, and I can provide it to
22 my client -- and either -- they can't have the CDs because
23 the CDs -- they'd have to have computers. My client has
24 indicated to me that he would like to have an interpreter be
25 with him. We would ask the Court to approve an extra 50 or

1 80 or \$180,000 in costs so we can have an interpreter go down
2 there at 4:00 in the morning, which I don't think we could
3 ever get; we're going to have to deal with that issue in the
4 future.

5 But the immediate issue is if the government could
6 provide my client at least -- and I don't want to speak for
7 Mr. Troiano -- with an MP3 player so he would be able to at
8 least listen to the taped telephone conversations and also
9 allow me to provide him with a hard copy of the verbatims so
10 he can listen to the Somalian conversations and have the
11 English, which he reads, in front of him and see if he thinks
12 that then he needs to have an interpreter help him with it.

13 He's asked me if we could get an interpreter, and
14 I'm -- you know, I haven't asked Budgeting at the Ninth
15 Circuit and Judge Miller for an extra several thousand
16 dollars or -- actually it would be a lot more than that -- to
17 do that. I think that it would be better for me to at least
18 have him be able to listen to the Somali conversations and
19 look at the English and then we'd go to the next step if in
20 fact we need to do that.

21 All that said, your Honor, if the Court feels that
22 we should put this matter over and let the defendants all be
23 here and have all of us defense attorneys be here and have a
24 full hearing and have the Court decide whether the Court's
25 going to order the government to do certain things or the

1 government's going to say they can't do certain things
2 because of security issues or they don't have approval from
3 Washington, I don't know. So maybe -- maybe Mr. Cole ought
4 to weigh in before the Court decides whether or not to
5 continue this or decide.

6 THE COURT: Well, yeah. Thank you for the
7 suggestion. You don't think I should just make a decision
8 based on what you told me right now?

9 MR. GELLER: Oh, happy to do that.

10 MS. HANOVER: Well, your Honor, my issue is similar
11 but slightly different --

12 THE COURT: Okay.

13 MS. HANOVER: -- as to Mr. Ahmed Nasir Mohamud.
14 He's being housed at the MCC, and his ability to review the
15 CDs in this particular case, the audio CDs, is a little bit
16 better. He's not in segregation, and he's allotted, from, my
17 investigator's telling me, discussion with Nellie, the
18 attorney there, his hours are up to 24 hours a week to at
19 least listen to the CDs. But the problem that I'm coming
20 across as well is that at first I understood that we would be
21 able to allow him -- allow my client to have a copy of the
22 verbatim so he could review it along with the actual audio
23 conversations to compare them, and that doesn't seem to be
24 the case with the new protective order. So the challenge
25 that I have is getting a copy available to him so he can

1 review all of that with the audiotapes together.

2 I've just recently learned today that I have at
3 least 100 hours so far approved by the Ninth Circuit to allow
4 an interpreter to go in to discuss the case with him and to
5 review things, at least initially. I'm not sure that that's
6 going to be enough for the -- you know, the long haul, but at
7 least for now it's enough to get us started.

8 But the main issue for us was just being able to
9 get the verbatims in so he could compare what the
10 government's alleging versus what's actually on the audio
11 conversations.

12 THE COURT: All right.

13 MR. COLE: Thank you, your Honor. Well, let me
14 just -- I want to, first of all -- not that this is the most
15 important point -- but it isn't 1100 hours. There aren't
16 even 1100 calls yet. There will be ultimately probably about
17 1100 calls turned over, but the calls are not all an hour
18 long; most of them are much shorter. So there's not 1100
19 hours of audio, nowhere even close unless a lot of those
20 calls are five or six hours long, and they're not. So that's
21 one point.

22 Second, we have -- as to the issue of segregation,
23 we haven't taken any position as to whether they should be
24 segregated. What I've told defense counsel, Mr. Geller
25 specifically, is that we didn't ask them to be segregated. I

1 wanted to make clear to defense counsel that the fact that
2 they're in segregation was a determination made by the
3 facilities under their own policies, and it's not really a
4 business that I'm an expert in or want to get involved in
5 directly. And so if they're not segregated, I'm fine with
6 that; if they are segregated, I'm fine with that. It's
7 whatever the MCC and Geo feels is appropriate for the
8 securities measures is the position I've taken on the issue
9 of segregation. I learned today for the first time --

10 THE COURT: So there's not a segregation order
11 emanating from the U.S. Attorney's Office to keep certain
12 defendants apart from one another or apart from other
13 potential witnesses?

14 MR. COLE: There were separation orders initially.
15 We removed the separation orders because we were having
16 people out at CCA, and that was a complaint we were getting
17 from defense counsel, and there's only so many facilities,
18 and the separation orders were becoming a little bit like a
19 strange puzzle for all the facilities to figure out, and we
20 got rid of the separation orders except -- I think none of
21 the defendants I believe are ordered separated from each
22 other; they're all -- none of the defendants have a
23 separation order vis-a-vis each other, and thus they're all
24 able to be at Geo or at MCC, which is what defense counsel
25 had hoped for, here at Geo or MCC.

1 They were put -- some or all of them -- I guess
2 some of them were put into segregation entirely under
3 whatever protocols MCC or Geo uses to determine where they
4 ought to house the prisoners, and we have not made any effort
5 -- we have not made any effort to either have them be in
6 segregation or to get them out because we've looked at that
7 as an internal issue for the prison. We have talked at
8 length in trying to help this issue of access. We have --
9 access to the audio and the verbatim translations. We have
10 corresponded at length with Nellie Klein and with Mr. Cleaves
11 from the Marshal's Service, and they have both assured us
12 that they will -- that they are -- they want nothing more
13 than to make this case work in an efficient way and that
14 they'll make -- make arrangements; they will -- the MCC, for
15 example, in the past has had a computer -- in drug cases with
16 lots of audio, has had a computer put in the SHU. Charlie
17 Cleaves from the Marshal's Service said that he would work
18 with us at Geo to figure out what the best way is to get more
19 access to the audio for the -- the inmates there.

20 So I don't see any of this really as a
21 insurmountable problem. It's just that we were only about
22 two weeks in to working on it before we came here for this
23 hearing. It sounds like they all have access. Some have
24 good access to the audio, like Ahmed Nasir; some have limited
25 access per day because they're in the SHU, or in segregation,

1 but we can work on that. I believe that Ms. Han and I and
2 defense counsel, by working with Nellie Klein and with the
3 facility at Geo -- or with MCC and with Geo -- can
4 undoubtedly increase the number of hours of access, even for
5 those in segregation, to a computer with the audio.

6 Now, the verbatim transcripts shouldn't be a
7 problem because we can have those simply there with the disks
8 so that when you go out to the computer to see the disks,
9 there's a booklet or a binder with the verbatims waiting for
10 you. The only thing the protective order -- currently the
11 protective order signed by Judge Miller requires the defense
12 counsel to keep the FISA-derived material in a secure place.
13 I proposed when I -- when it was brought to my attention that
14 there was going to be this inefficiency where every time a
15 defendant wants to -- under the protective order, when a
16 defendant wants to hear a call, defense counsel or an
17 investigator has to go across the street and do it, that's
18 going to be very inefficient. I proposed an amendment that
19 would simply allow the facility to hold those materials, but
20 there's strong opposition from the FBI and from Main Justice
21 in letting the defendants themselves simply have their own
22 copy. There is -- we have gotten agreement that the facility
23 can hold the copy for them, and that's where it stood before
24 we came into the hearing today.

25 We don't have it fully resolved yet exactly when

1 the computer can get set up in the SHU or what number of
2 hours they all can get, but we do have an agreement from both
3 facilities they'll work with us to increase the access. And
4 I -- I guess I'll leave it at that.

5 I question -- it's not really the issue for the
6 day, but I question the notion that an interpreter has be
7 there or the defendant has a right to have an interpreter
8 there to review calls in their native language. I mean if we
9 -- if they go over English calls to somebody whose primary
10 language is English, I don't send an English interpreter to
11 sit with them while they listen to the calls. And I think
12 that is expensive, it's unnecessary when it's their primary
13 language, and as long as defense counsel has access to
14 interpreters and the defendant can understand the calls, it
15 seems to me that's -- that's what we're trying to get at.
16 Thank you.

17 THE COURT: All right.

18 MS. HANOVER: Your Honor, just to address that last
19 point, my client is not that proficient in English, and the
20 verbatims are in English. So the purpose of the interpreter
21 would be to assist in going over the English versions with my
22 client as he listened to the versions in his own language.

23 THE COURT: All right. Here's what I -- are there
24 any --

25 MR. SHERIF: Your Honor, on that point, perhaps the

1 government could give us the Somali verbatims because the
2 clients -- the language spoken on the tapes is Somali, and I
3 am sure that when the government was listening to the -- or
4 their interpreters, the government's Somali interpreters were
5 listening to these conversations, I would tend to think that
6 first they would put it in the Somali language, they would
7 write the Somali, and then they'd take that and take it --
8 interpret it into English. What we have is the English
9 version. I think if they gave us the Somali version that
10 they have, then the clients would probably be able to not
11 need the interpreter more.

12 THE COURT: Well, here's what I'd like to do.
13 Since this has just arisen and come to my attention today
14 without either side having an opportunity to brief it -- and
15 maybe we don't need to brief it; Mr. Cole's point is that
16 perhaps we just need a little time to try to resolve the --
17 the challenges that -- the unique challenges that a case like
18 this presents with opposing counsel -- and we don't have all
19 the attorneys here to begin with -- are there any -- the next
20 date that I see is a status hearing in -- on April 7, which
21 is about five, six weeks from today. Are there any dates
22 beyond that that have been set like motion hearing dates
23 or -- okay.

24 So what I -- what I think I'd prefer to do is to
25 give all the attorneys here two weeks to try to resolve these

1 logistical issues and, you know, work up a plan; and then if
2 there -- a plan is mutually agreed upon, then there's no need
3 for the Court to get involved as to how that plan will be
4 implemented. Assuming that the institutions are on board,
5 defense counsel is on board, the United States is on board,
6 then everybody's happy.

7 If in that two-week period -- we'll have another
8 status, but within the two-week period, if, you know, the
9 plan is drawn up and there are some disagreements as to how
10 the plan ought to be implemented or you can't agree on
11 certain points, then we'll get back together, we'll have a --
12 you know, we'll have another status hearing, I'll have the
13 clients here, the defendants here, and we'll have -- I'll be
14 in a much better position to discuss, intelligently, ways to
15 resolve the disputes or differences that continue to exist.

16 Given the fact that we don't have something that's
17 on your calendar upstairs with Judge Miller that is urgent, I
18 think two weeks might be an acceptable time period for you
19 all to put your heads together, noodle it over, and come up
20 with something that is acceptable. And if you can't, then
21 we'll come back and I'll get involved. How's that? Is that
22 acceptable? I mean is time -- in other words, I guess my
23 question is is time of the essence that we need to do this
24 right now or within the next 24 or 48 hours to get a
25 resolution of this?

1 MR. GELLER: I don't think so, your Honor, on
2 behalf of Mr. Moalin. You know, we -- we want to have the
3 case move along --

4 THE COURT: Sure.

5 MR. GELLER: -- fairly rapidly. It's not. I don't
6 think we're going to go trial for a good year or more, but --
7 so I don't think that two weeks is going to make a big
8 difference in the long run. I wondering though if the Court
9 might look into -- inasmuch as the government says there's no
10 -- they have no concerns with respect to how and where the
11 defendants are housed, if somehow the Court could assist in
12 to getting all the defendants into general population at MCC,
13 that might resolve the whole mess.

14 THE COURT: Well, I'm not prepared to go there just
15 yet. I'm -- like Mr. Cole, I'm a little loath to interfere
16 with the inner workings of an institution that may have
17 security concerns to -- to deal with, and there may be other
18 alternatives that -- that satisfy the needs of your clients
19 to get the information in a timely fashion, have access to
20 the information, review the information. So I'm not prepared
21 to go there yet; that's why I'm suggesting that you all get
22 together and bandy about whatever suggestions you may have,
23 you know, asking all parties to be reasonable and -- and
24 confer in good faith over this, and I'm confident that you
25 can iron out many of these issues. There may be some that

1 linger; those ones that linger, if any, you know, then I'll
2 -- I'll get involved. And it may be, Mr. Geller, that
3 ultimately I may, you know, seek the MCC or Geo's input as to
4 why certain individuals are in segregation, is there a way to
5 -- to reverse that decision and put folks in general
6 population and perhaps even in the same institution seeing as
7 how there's no separation order, but I'm not -- not there
8 yet. And this may be two weeks well spent that may
9 ultimately inure to everyone's benefit in terms of speeding
10 up the review of discovery on your part so you're not going
11 to trial in 2015.

12 MR. SHERIF: I hope not, Judge.

13 THE COURT: I hope -- well, I don't think -- no
14 matter how it turns out, you're not going to be in trial in
15 2015. I suspect it will be later this year or maybe 2012.
16 Judge Miller's not going to --

17 MR. SHERIF: No.

18 THE COURT: -- stick around until 2015 to try this
19 case. So why don't we do that. Let's have another status
20 hearing --

21 MR. SHERIF: Should we have a date --

22 THE COURT: -- in two weeks. We'll set it right
23 now.

24 MR. GELLER: March 8?

25 MS. HANOVER: I'm going to be out of town from the

1 3rd to the 8th of March actually.

2 THE COURT: Okay. So how about the 10th?

3 MS. HANOVER: I'll be back by then.

4 MR. GELLER: That would be fine. Could we do it at
5 2:30?

6 THE COURT: Well, I think it'd probably be best if
7 we put it on towards the end of the calendar, so maybe even
8 three o'clock. I don't know what the calendar looks like.
9 Don't have anything?

10 MR. GELLER: Three o'clock's fine.

11 THE COURT: All right. 2:30 would be fine. So
12 March the 10th at 2:30. Mr. Mohamud, you're ordered back
13 here to this courtroom on March the 10th at 2:30 for further
14 discussions regarding the issues that we've just talked
15 about. Have you understood everything that's being -- that's
16 been said so far today?

17 DEFENDANT MR. MOHAMUD: Yes, I understand it.

18 THE COURT: All right. And the other defendants
19 will also be present on that time as well. What I would ask
20 all the parties, if -- if there is a -- a disagreement or a
21 dispute that continues to remain after a week and a half or
22 so of -- of talking about it, I would ask that by March 8th
23 -- I know you'll be out, Ms. Hanover, but maybe one of the
24 other defense counsel -- all I'll need is a -- I'd like a
25 joint statement from the two sides as to what the issues

1 remain that need to be resolved so I have some advance
2 warning of what's going to be discussed at the status hearing
3 on the 10th of March; so if you could file that by the 8th of
4 March, you know, these are the -- I don't really care. If
5 you've resolved all the issues, then fine, I don't need to
6 even be concerned about that.

7 MR. COLE: You mean each file a statement or one
8 statement?

9 THE COURT: One statement --

10 MR. COLE: Okay.

11 THE COURT: -- of just what remains. You know, I
12 don't -- I don't even really care to hear so much as, you
13 know, we had this issue, we resolved it, we had this issue,
14 we resolved it -- that's great. All I want to know is the
15 things that are left unresolved and ways that the government
16 proposes to resolve it and suggestions on the -- on the
17 defense side as to ways to resolve that remaining issue or
18 issues, and then I'll have a better -- a better idea of what
19 is left on the table to discuss. All right?

20 MR. SHERIF: Thank you, your Honor.

21 MR. GELLER: Thank you, your Honor.

22 MS. HANOVER: Thank you, your Honor.

23 THE COURT: Is that an acceptable way to resolve
24 this?

25 MR. COLE: Yes, your Honor.

1 MS. HANOVER: Yes, your Honor. Thank you.

2 MR. SHERIF: Yes, your Honor.

3 MR. GELLER: Yes, your Honor.

4 THE COURT: All right. So I'll see you all here in
5 -- in a couple weeks on March 10th at 2:20.

6 MR. GELLER: Thank you very much, your Honor.

7 MR. SHERIF: Thank you, your Honor.

8 MS. HANOVER: Thank you.

9 THE COURT: Thank you.

10 (The proceedings were concluded.)

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1 I, Debra M. Henson, an Official Court Reporter in and
2 for the United States District Court for the Southern
3 District of California, certify that the foregoing is a true
4 and correct transcription of the electronic sound recording
5 of the proceedings in the above-entitled matter, transcribed
6 to the best of my ability.

7
8 /s/ Debra M. Henson
Official Court Reporter
9 and Transcriber

3-19-14
Date